IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

WA.No. 759 of 2007

AGAINST THE JUDGEMENT IN WPC.16046/2003 Dated 06/11/2006
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APPELLANT: RESPONDENTS 1 TO 3 IN THE WP(C):
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1. STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT, FINANCE DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE COMMISSIONER OF LAND REVENUE, THIRUVANANTHAPURAM.

3. THE DISTRICT COLLECTOR, ERNAKULAM.

BY GOVT PLEADER SRI MANOJKUMAR

RESPONDENTS: PETITIONER IN THE WP(C)

K.K.ABOOBACKER, VILLAGE OFFICER,
RAYAMANGALAM VILLAGE,
PERUMBAVOOR.

BY ADV. SRI.N.SUGUTHAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON 18/08/2007 DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

Writ Appeal No 759 of 2007

Dated: 18th August 2007

JUDGMENT

Radhakrishnan,J.

The question that is posed for consideration in this case is whether the period of notional promotion could be treated as qualifying service for the time bound higher grade as per various orders issued by the Government.

2. Learned single judge of this court in Ibrahim v. Commissioner and Secretary to Government (2003 (1) KLT 534) has taken the view that whether a person who was in actual discharge of duties attached to a post is not a consideration relevant in the matter of granting higher grade. Following the above mentioned decision W.P.C. No 16046 of 2003 was disposed of quashing Exts. P10 and P10(a) and giving a positive direction to the third respondent to grant the petitioner higher grade of Rs 4600-7125 with effect from 14.03.1999 on completion of 8 years of service in the first promotion

post of U.D. Clerk. State Government is aggrieved by the said judgment and has filed this appeal.

3. Sri Manojkumar, learned Government Pleader submitted that learned single judge was not justified in granting the benefit of higher grade which is available only to those employees who were actually stagnated in the post for a number of years. Government Pleader also submitted that the period of retrospective notional promotion cannot be reckoned for allowing time bound higher grade which is sanctioned on the basis of length of actual service/stagnation in a particular post. Government Pleader referred to various government orders viz.; G.O.(Ms) No 439/79/GAD dated 1.8.1979, G.O.(P) No 1041/79/(142)/Fin dated 27.11.1979, G.O.(P) 81/80/(159)/Fin dated 22.01.1980 and also the letter 16.10.1993 and 09.07.2002 and submitted that the above mentioned government orders would show that the intention of the Government was only to grant higher grade to those persons who are actually stagnating in a particular post without any chances of promotion.

4. Sri N. Sugathan, learned counsel for the respondent herein submitted that the employee is given the benefit of notional promotion counting the period of retrospective notional promotion

with effect from 14.03.1999 has to be treated as duty. Counsel referred to the G.O dated 25.11.1998 and submitted that as per the said order second higher grade has to be granted on completion of either 8 years service in the first promotion post or a total service of 18 years in the entry post and the first regular promotion post / time bound higher grade together. Learned counsel submitted that learned single judge was justified in holding that whether a person who was in actual discharge of duties attached to a post is not a consideration relevant in the matter of granting higher grade.

5. First respondent entered service as L.D. Clerk in the Revenue Department on 27.2.1984. On completion of ten years of service in the L.D cadre in Ernakulam district he was granted first time bound higher grade promotion on 27.2.1994 and thereafter he was promoted as U.D. Clerk as per order dated 14.5.1996. In the final seniority list of U.D.C/V.O published by the Secretary, Board of Revenue (L.R) first respondent was assigned U.D cadre with retrospective effect from 23.3.1991 since he had acquired the necessary test qualification for promotion to U.D. Clerk. On the basis of that he applied for second time bound higher grade on completion of 8 years of service in the first promoted post of U.D. Clerk with

effect from 23.3.1999. Same was rejected by the District Collector stating that time bound higher grade is intended to give relief to those who actually stagnate in the post without promotion. It was submitted that notional period of promotion cannot be treated as qualifying service in sanctioning time bound higher grade. First government order which dealt with the grant of benefit of higher grade is G.O.(Ms) No 439/79/GAD dated 1.8.1979 which is extracted hereunder for easy reference.

G.O.(Ms)439/79/GAD Dated,Trivandrum,1st August 1979

Abstract: Public Services - Non-Gazetted Officers without adequate promotional avenues - Benefit of a higher grade - Orders issued.

O R D E R

Government are pleased to order that all the Non-Gazetted Officers who remain in the entry grade without a promotion in the normal course shall be allowed the benefit of a higher grade on completion of 13 years of service in the entry grade. This order will take effect from 1.7.1979.

Detailed instructions in regard to implementation of the above orders will be issued separately.

By Order of the Governor
M.S.K. RAMASWAMY
Special Secretary

It is clear from the above mentioned order that the benefit of higher

grade would be granted to a non gazetted officer only if he remains in the entry grade without a promotion and that he must complete 13 years of service in the entry grade. The expression “remain in entry grade” has to be taken note of. The word “remain” means: to stay or be left behind, to continue in the same place, to continue unchanged. Further, such continuance must be without promotion. Second government order which is relevant for the purpose of this case is G.O.(P)1041/79/(142)/Fin dated 27.11.1979 which refers to grant of increments. Relevant portion of the government order is extracted below:

> 2. The Government, after ascertaining the views of the Service Organizations and after considering all the relevant factors, are pleased to issue the following instructions for the implementation of the orders contained in the G.Os read above:
>
> (i) xx xx xx xx
> (ii) The service put in in the entry grade or post which will count for normal increments in that grade (scale of pay) shall be treated as qualifying service for purposes of computing the 13 years' period for granting the higher grade. Provisional service also will be reckoned as qualifying service for the purposes of this rule, subject to the restrictions mentioned in Government Decision No.2 under Rule 33 of K.S.R Part I.
>
> (iii) xx xx xx xx
> (iv) xx xx xx xx
> (v) xx xx xx xx

(vi) The benefit of the higher grade on completion of 13 years of qualifying service in the entry grade/post shall be given irrespective of the fact whether the incumbent has passed the obligatory departmental tests, if any, prescribed for promotion. But seniority in the higher grade shall be determined only after he acquires test qualifications and subject to other rules of probation and seniority. It is likely that a junior hand who is a direct recruit to a particular post may get the higher grade on completion of 13 years qualifying service as per these orders, while his senior who is a promotee to the post will not get the benefit of higher grade. This will not confer any claim for seniority to the junior hand.

(vii) xx xx xx xx
(viii) xx xx xx xx

(ix) In the case of an employee whose promotion is barred, the benefit of the higher grade shall be given only after he puts in a total period of qualifying service of 13 years in the entry grade or post excluding the period for which the promotion is barred.

(x) xx xx xx xx

(xi) For each category, the higher grade to be allowed, will be specified by Government.

Expression “service put in in the entry grade” means actual service put in. An employee will stagnate in a post only if he remains in that post. If he does not remain in a particular post then there is no question of stagnation. As per G.O.(P)3000/98/Fin dated 25.11.1998 revision of scales of pay of government employees was ordered for for time bound higher grade promotion. Relevant portion

of the said order is extracted below.

> 5.(1)(a) Ratio/Percentage based on higher grade.
>
> The existing ratio/higher grade and the improved ratio to the various categories are indicted at the appropriate places under each Department. The newly introduced ratio/improved ratio promotion will have effect from the date of this order.
>
> (b) Time bound higher grade promotion scheme:-
>
> (1) The existing time bound higher grade promotion scheme and the grades to be assigned on revision of pay scales under the scheme will be modified as specified in the Table I and II given below with effect from the date of order.
>
> (2) Employees who remain in their entry posts on scale of pay ranging from Rs 2610-3680 to Rs 4600-7125 will be granted three higher grades on completion of the period of qualifying service in their posts as follows with the scale of pay indicated in Table 1.
>
> (i) The first higher grade on completion of 10 years service in the entry post.
>
> (ii) The second higher grade on completion of either 8 years of service in the first promoted post or a total service of 18 years in the entry post and the first regular promotion post/time bound higher grade together, whichever is earlier.

Government also used the expression “employees who remain in their entry posts” and also the expression “qualifying service”, which in our view, refers to the situation where an employee remains in a particular post and actually stagnates in a post without promotion, that means, the employee must be standstill in that post. Government in letters dated 16.10.1993 and 9.7.2002 have also

clarified the position stating that the period of notional promotion cannot be reckoned for the purpose of granting time bound higher grade.

6. We are of the view, period of retrospective notional promotion cannot be reckoned as qualifying service for the purpose of time bound higher grade. Grant of time bound higher grade is only a benefit granted by the Government so as to remove the frustration of those employees who remain or stagnate in a particular post. Government orders, in our view, do not give such benefit to those who are given retrospective notional promotion and such benefit is available only to those who actually remain or stagnate in a particular post. Applying the above mentioned principle, petitioner in this case is not entitled to get second higher grade with effect from 14.3.1999 as claimed by him reckoning his notional date of promotion from 25.3.1991. Facts would show that the petitioner has entered service as L.D.C on 27.02.1984. He was granted time bound higher grade promotion on completion of ten years of service on 27.02.1994. Petitioner was promoted as U.D.Clerk vide order dated 14.05.1996. Petitioner had not stagnated in that post. Later he was assigned the date of promotion as

U.D.Clerk on 25.03.1991. Petitioner says that he is entitled to second higher grade on completion of 8 years from 25.3.1991. In our view, he is entitled to get second higher grade promotion only on completion of 8 years of service in the first promoted post since he had not stagnated in that post. Ibrahim's case was decided based on different fact situation where on facts he had stagnated in the sense that he was denied promotion as A.M.V.I and only by virtue of a court order he was restored the benefits and hence the reasoning adopted in the case would not apply to this case. Learned Government Pleader submitted that the Government have granted the benefit to few persons on the strength of the decision in Ibrahim's case and those orders are under review and hence petitioner cannot claim benefit of those orders which are under review. Government would act in accordance with the declaration granted by this court. Writ appeal is therefore allowed and the judgment of the learned single judge is set aside.

Sd/-
K.S. RADHAKRISHNAN
Judge
Sd/-
ANTONY DOMINIC
Judge

18/08/2007en

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